

## SENATE BILL NO. 466

INTRODUCED BY G. BRANAE

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO INVOLUNTARY COMMITMENT; REQUIRING COUNTY ATTORNEYS TO FILE PETITIONS FOR INVOLUNTARY COMMITMENTS AND PROHIBITING COMMUNITY SERVICE PROVIDERS FROM BEING REQUIRED TO TREAT CERTAIN PERSONS WITH A MENTAL DISORDER WITHOUT COMPENSATION; AND AMENDING SECTIONS 53-21-102, 53-21-121, 53-21-129, AND 53-21-132, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 53-21-102, MCA, is amended to read:

**"53-21-102. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental

1 disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring  
2 commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend  
3 of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a  
4 charitable or religious organization, or any other person appointed by the court to perform the functions of a friend  
5 of respondent set out in this part. Only one person may at any one time be the friend of respondent within the  
6 meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the  
7 respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

8 (9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial  
9 adverse effects on an individual's cognitive or volitional functions.

10 (b) The term does not include:

11 (i) addiction to drugs or alcohol;

12 (ii) drug or alcohol intoxication;

13 (iii) mental retardation; or

14 (iv) epilepsy.

15 (c) A mental disorder may co-occur with addiction or chemical dependency.

16 (10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care  
17 center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility,  
18 or a residential treatment center licensed or certified by the department that provides treatment to children or  
19 adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the  
20 meaning of this part.

21 (11) "Mental health professional" means:

22 (a) a certified professional person;

23 (b) a physician licensed under Title 37, chapter 3;

24 (c) a professional counselor licensed under Title 37, chapter 23;

25 (d) a psychologist licensed under Title 37, chapter 17;

26 (e) a social worker licensed under Title 37, chapter 22; or

27 (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in  
28 psychiatric mental health nursing.

29 (12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person  
30 receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory

responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Precommitment" means the time beginning on the day a person believed to be suffering from a mental disorder is held involuntarily at a mental health facility pursuant to this part through the day the person is committed pursuant to 53-21-126.

~~(16)~~(17) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a licensed psychologist; or

(d) a person who has been certified, as provided for in 53-21-106, by the department.

~~(17)~~(18) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(18)~~(19) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(19)~~(20) "State hospital" means the Montana state hospital."

**Section 2.** Section 53-21-121, MCA, is amended to read:

**"53-21-121. Petition for commitment -- contents of -- notice of.** (1) The county attorney, upon the written request of any person having direct knowledge of the facts, ~~may~~ shall file a petition with the court alleging that there is a person within the county who is suffering from a mental disorder and who requires commitment pursuant to this chapter.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental disorder, including a report by a mental health professional if any, a statement of the disposition sought pursuant to 53-21-127, and the need for commitment;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the respondent for whom evaluation is sought;

(e) the name and address of the respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the respondent for whom evaluation is sought; ~~if~~ If there is no attorney, there must be a statement as to whether to the best knowledge of the person requesting the petition the respondent for whom evaluation is sought is indigent and unable to afford the services of an attorney; ~~if~~

(h) a statement of the rights of the respondent, which must be in conspicuous print and identified by a suitable heading; and

(i) the name and address of the mental health facility to which it is proposed that the respondent may be committed, if known.

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered, mailed, or sent by a facsimile transmission to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent, the director of the department or the director's designee, and the mental health facility to which the respondent may be committed, if known. The notice may provide, other than as to the respondent and the respondent's counsel, that no further

1 notice will be given unless written request is filed with the clerk of court."

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3 **Section 3.** Section 53-21-129, MCA, is amended to read:

4 **"53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation exists, a  
5 peace officer may take any person who appears to have a mental disorder and to present an imminent danger  
6 of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional  
7 person for emergency evaluation. If possible, a professional person should be called prior to taking the person  
8 into custody.

9 (2) If the professional person agrees that the person detained is a danger to the person or to others  
10 because of a mental disorder and that an emergency situation exists, then the person may be detained and  
11 treated until the next regular business day. At that time, the professional person shall release the detained person  
12 or file findings with the county attorney who, ~~if the county attorney determines probable cause to exist,~~ shall file  
13 the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either  
14 case, the professional person shall file a report with the court explaining the professional person's actions.

15 (3) The county attorney of a county may make arrangements with a federal, state, regional, or private  
16 mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section.  
17 If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available  
18 to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health  
19 inpatient facility, subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided  
20 in this part. This determination must be made on an individual basis in each case, and the professional person  
21 at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

22 (4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility  
23 under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and  
24 shall state whether a bed is available for the person. If the professional person determines that a behavioral  
25 health inpatient facility is the appropriate facility for the emergency detention and a bed is available, the county  
26 attorney shall direct the person to the appropriate facility to which the person must be transported for emergency  
27 detention."

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29 **Section 4.** Section 53-21-132, MCA, is amended to read:

30 **"53-21-132. Cost of examination and commitment.** (1) The cost of psychiatric precommitment

1 examination, detention, treatment, and taking a person who is suffering from a mental disorder and who requires  
2 commitment to a mental health facility must be paid pursuant to subsection (2)(a). The sheriff must be allowed  
3 the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

4 (2) (a) The costs of precommitment psychiatric detention, precommitment psychiatric examination, and  
5 precommitment psychiatric treatment of the respondent and any cost associated with testimony during an  
6 involuntary commitment proceeding by a professional person acting pursuant to 53-21-123 must be billed to the  
7 following entities in the listed order of priority:

8 (i) the respondent, the parent or guardian of a respondent who is a minor, or the respondent's private  
9 insurance carrier, if any;

10 (ii) a public assistance program, such as medicaid, for a qualifying respondent; or

11 (iii) the county of residence of the respondent in an amount not to exceed the amount paid for the service  
12 by a public assistance program.

13 (b) The county of residence is not required to pay costs of treatment and custody of the respondent after  
14 the respondent is committed pursuant to this part. Precommitment costs related to the use of two-way electronic  
15 audio-video communication in the county of commitment must be paid by the county in which the person resides  
16 at the time that the person is committed. The costs of the use of two-way electronic audio-video communication  
17 from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must  
18 be paid by the state. The fact that a person is examined, hospitalized, or receives medical, psychological, or other  
19 mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay  
20 for the cost of the examination, hospitalization, or treatment.

21 (3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody  
22 ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health  
23 program funds.

24 (4) A community service provider that is a private, nonpublic provider may not be required to:

25 (a) treat or treat without compensation a person who has been committed;

26 (b) treat without compensation a person who is in the precommitment process;

27 (c) continue treating a person who is in the precommitment process beyond the coverage limitations  
28 defined by its accrediting body; or

29 (d) treat a person who has failed a previous community commitment and been recommitted."

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